

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 UNITED STATES OF AMERICA
4 Plaintiff

5 v.
6 FRANCISCO PENA
7 Defendant

CRIMINAL NO. 05-408(JAG)

8 **REPORT AND RECOMMENDATION**

9
10 On this date defendant appeared before the undersigned to plea guilty to Count I of the
11 indictment charging him with violating of 18 U.S.C. § 1542. Defendant was represented by attorney
12 Eric Pijuan, with whom he is satisfied with his representation. The government, in turn, was
represented by AUSA Marcos López. The parties duly executed a consent form permitting the
undersigned to take defendant's plea, pursuant to a plea agreement which was made part of the
record.

13 Upon examining defendant throughout the proceeding, the undersigned finds him competent
14 to enter a plea. Defendant was advised at the hearing of the minimum and maximum statutory
15 penalties he faces, and that the Sentencing Guidelines are advisory in nature. He was further advised
16 that the sentencing judge has the authority to sentence him within those parameters, at the Court's
discretion, and that the plea agreement is not binding on the Court. More so, once he is sentenced,
defendant may not withdraw his plea simply because he is not satisfied with the sentence imposed
upon him. The undersigned also advised defendant of the constitutional rights he waives by entering
a guilty plea.

17 Upon inquiry by the Court, defendant accepted all the elements of the offenses outlined in
18 Count I of the indictment, as well as the fact that he acted knowingly, willfully and intentionally.

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20 It is thus recommended by the undersigned that defendant's guilty plea be accepted, and
sentence be imposed upon him accordingly.

21 This report and recommendation is issued pursuant to 28 U.S.C. § 636 and Local Rule 72(d).

22 **SO RECOMMENDED.**

23
24 In San Juan, Puerto Rico, this 24th of January, 2006

25
26 *Gustavo A. Gelpi*

27 **GUSTAVO A. GELPI**
28 United States Magistrate-Judge